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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.
25 Plaintiff,
26 v.
GOOGLE INC.
27 Defendant.

Case No. CV 10-03561 WHA

**[PROPOSED] ORDER GRANTING
ORACLE'S MOTION IN LIMINE #5
REGARDING GOOGLE'S SURVEY
EXPERT, DR. SIMONSON**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

[PROPOSED] ORDER GRANTING
ORACLE'S MOTION IN LIMINE #5
REGARDING DR. SIMONSON

1 This Court has read and considered Plaintiff Oracle America, Inc.'s Motion in Limine #5
2 Regarding Google's Survey Expert, Dr. Simonson, any Opposition thereto and Reply in support
3 thereof, and any and all additional supporting papers.

4 Based thereon [and on statements made by counsel at the hearing on the Motion], IT IS
5 HEREBY ORDERED THAT Oracle's Motion is GRANTED.

6 Dr. Simonson's survey as well as Dr. Simonson's analysis, opinions, and conclusions are
7 inadmissible under Federal Rules of Evidence 401, 402, 702, and 703, and *Daubert v. Merrell*
8 *Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny as not relevant, unreliable, and
9 based on flawed methodology. Dr. Simonson's survey and his expert report are stricken in their
10 entirety. Dr. Simonson will not be permitted to testify in this case. [Alternatively, Dr. Simonson
11 is precluded from testifying in Phase I of the trial on fair use.]

12 IT IS SO ORDERED.

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THE HONORABLE WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE
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